

**PROCEEDINGS OF THE BROWN COUNTY**  
**PUBLIC SAFETY COMMITTEE**

Pursuant to Section 19.84 Wis. Stats., a special meeting of the **Brown County Public Safety Committee** was held on Wednesday, May 16, 2012 in Room 210, City Hall, 100 N. Jefferson Street, Green Bay, Wisconsin.

---

**Present:** Chair Buckley, Bill Clancy, Andy Nicholson, Tim Carpenter  
**Excused:** Guy Zima  
**Also Present:** Tom De Wane, Karl Fleury, Troy Streckenbach, Pat La Violette, other interested parties

---

**I. Call meeting to order.**

The meeting was called to order by Chair Buckley at 6:30 p.m.

**II. Approve/Modify Agenda.**

**Motion made by Supervisor Nicholson, seconded by Supervisor Clancy to approve. Vote taken.**  
**MOTION CARRIED UNANIMOUSLY**

**1. Review and approve an Exchange of Services Agreement between the Oneida Tribe of Indians and Brown County, in regards to a Public Safety radio communications tower and site.**

Public Safety Communications Director Karl Fleury stated this Exchange of Services Agreement concerns a parcel of land owned by the Tribe that the County wants to place a tower on for the radio communications project. Fleury continued that with the assistance of Corporation Counsel the Agreement has been carefully formulated and outlines all of the items, concerns and issues that had been brought forward. He also stated that the Tribe has been very receptive in working with the County and Fleury felt this Agreement would be mutually beneficial to both the County and the Tribe.

Supervisor Nicholson asked Fleury to elaborate on the details and Fleury stated that the land is located in the 300 block of Trout Creek Road, Parcel Number HB678. Fleury continued that several alternate locations including the landfill and the golf course were considered for placement of the tower and the engineering study found this proposed site to be most suitable. Fleury also stated that this is the last site to secure to move forward with the radio project and until the Agreement is in place, the County cannot break ground to move forward with construction.

The arrangements of the Agreement would be that the Tribe will not charge the County a fee, however the County will be responsible for the taxes on the land which are slightly over \$500 per year. Fleury continued that other components include a dispute resolution clause similar to other agreements that Brown County currently has. In the event of a dispute each side would choose one mediator and then the two mediators would choose a third mediator to resolve any disputes between the governing bodies. The mediators' decision could be appealed if necessary in the Circuit Court of Brown County.

Supervisor Carpenter felt that this draft of the Agreement was dramatically stronger than the first draft and he thanked Karl Fleury, Corporation Counsel and County Executive Troy Streckenbach for the extra hard work in getting this Agreement done. The only thing Carpenter felt should be changed is in Item 21D with regard to the Limited Waiver of Immunity that states the Tribe will specifically waive sovereign immunity and consent to suit in Brown County Circuit Court. Although Carpenter did not foresee any problems with this project, he noted that in the event of unforeseen issues, this would automatically be heard in Federal Court and not Circuit Court. He said that if the Agreement could be changed to say that

the Tribe would waive sovereign immunity in both Brown County Circuit Court AND Federal Court, he would approve of the Agreement.

**Motion made by Supervisor Carpenter, seconded by Supervisor Nicholson to amend Paragraph 21D to say that the Tribe waives sovereign immunity in Brown County Circuit Court and Federal Court. No vote taken.**

Corporation Counsel Kristen Hooker understood Carpenter's position; however, she explained that what is being agreed to in Paragraph 21D is that no party would go into Circuit Court on any issue other than a dispute of an arbitration decision. She also stated that Courts are very reluctant to interfere with binding arbitration and there would have to be a very legitimate complaint, such as fraud, before the Court would hear this matter. Buckley asked if it would be possible for any arbitration to end up in Federal Court and Hooker responded that typically the types of claims that allow binding arbitration to come before a judge include a claim of some type of fraud. She has never seen a challenge on an arbitration decision nor has she ever heard of an arbitration decision going past the Circuit Court level. Hooker was not able to say if it would be an issue to have the Tribe consent to waiving immunity in Federal Court, however, she was concerned with having to go back and get everything re-approved. Carpenter stated that he did not want to delay the Agreement any further, but he also does not want to jeopardize the County's position.

Carpenter also wished to make the Committee aware that the parcel which is the subject of this Agreement is currently in application for trust to the Federal Government. If this trust were to be granted, statements in Paragraphs 6, 7 and 8 of the Agreement would become null and void. He stated that this is application for trust is good for 30 years and there has not been any land put into federal trust since 2008, however, he felt that the Tribe should have mentioned this in negotiations.

**Motion made by Supervisor Carpenter, seconded by Supervisor Nicholson to approve the Exchange of Services Agreement between the Oneida Tribe of Indians and Brown County for parcel HB678 with the modification to add Federal Court to Number 21 D. Vote taken. MOTION CARRIED UNANIMOUSLY**

Supervisor Clancy asked Hooker if she felt the Agreement could be jeopardized by going back to the Tribe for the proposed modification and Hooker stated that she was not able to say if this would be a deal breaker, however, they had already pushed quite far and further when they started negotiations the Tribe advised her that they are not even necessarily approving limited waivers any more in their Exchange of Services Agreements but that this was such a benefit to both parties that they would make an exception. She stated that she does have a good rapport with her contact at the Tribe, but her contact may then have to go to her own Board for approval.

Clancy asked how much time it would take to go back to the Tribe for the modification and how the County could be affected. Fleury stated that it was his understanding that the Tribe had preliminarily worked through their approval process with the Agreement pending Brown County's approval. Fleury stated that the Tribe would have to go back through their approval process including the Land Use Committee and their full Board and then would come back to the County for finalization but he was unable to give a definitive answer as to how long this could take. Buckley felt that based on the negotiations that have been had to date and how far this Agreement has come from its original format, asking the Tribe to add the Federal Court provision would not be that big of a deal. Hooker stated that under normal circumstances she would agree with Buckley, however she has noticed that there are some people with the Tribe that do not wish to allow these limited waivers for whatever reason.

Carpenter wished to point out that even if the County agrees to the Agreement, the Village of Hobart still has to give the permitting for the tower. Supervisor De Wane stated that the County has a good working relationship with the Tribe and he felt this was a good situation for both sides. County Executive Troy Streckenbach stated that when the original Agreement was brought forward, some Supervisors had great reservations and they went to great lengths and spent many hours working on this. Streckenbach continued that the Tribe has made all the concessions with regard to the Agreement and he questioned if it was worth jeopardizing the trust and cooperation they have built with the Tribe to add the modification. He continued that the Agreement provides the County a good opportunity to save some dollars in not having to go to a private site for the tower. He felt that Fleury and Hooker have built a very good rapport with the Tribe and he wished it be noted that the Tribe has made a significant amount of concessions to help the Agreement move forward.

Supervisor La Violate agreed with Streckenbach and stated that it was highly unlikely that any arbitration would go to Federal Court. She also felt that the new County Board will make a great effort to support the hard work that the staff does and do everything possible to improve relations with the Board and the staff as well as the municipalities. She felt that the Agreement should be approved tonight. Clancy did not wish to jeopardize the entire Agreement for something that was unlikely to happen and stated that he would approve the Agreement the way it is.

Fleury stated that the Agreement could be approved now the way it stands with the caveat that the County try to add the Federal Court language and if that is not possible, then it stands the way it is. He pointed out that if the Agreement is not approved at this time and the County goes back to the Tribe for the modification, the Tribe could say that was a deal breaker. Fleury also noted that there has been a lot of time and effort put into the Agreement and he also felt that the statement by the County Executive is correct in that the Tribe has made many concessions and the working relationship with the Tribe is good. He stated that the benefit here is to Brown County and to the agencies that we serve.

Buckley felt it would be best to not raise trust issues with the Tribe and he felt that the proposed solution is simple and solves the concerns of the Committee as well as the permit process. He felt that the Agreement should be approved tonight and if we need to have another meeting after we find out what Hobart does, we can do that.

Carpenter stated that the release of sovereign immunity should not be taken lightly as it is very, very important to the Tribe, especially regarding land. Clancy asked if the biggest concern was with the Tribe or with Hobart. Carpenter felt that if the Federal Court language was not added, the County could end up spending a lot more time and money to find a different tower site as Hobart has agreed to the permitting for the tower. He stated that if the Agreement is done, the permitting from Hobart should be done the following week.

2. **Such other matters as authorized by law.**

**Motion made by Supervisor Nicholson, seconded by Supervisor Carpenter to adjourn at 7:03 p.m. Vote taken. MOTION CARRIED UNANIMOUSLY**

Respectfully submitted,

Therese Giannunzio  
Recording Secretary